

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID MONARREZ,

Defendant.

8:12CR70

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report ("PSR") and the Defendant's objection thereto (Filing No. 271). The Defendant also moves for a departure based on over representation of his criminal history category (Filing No. 271). The government adopted the PSR (Filing No. 267). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the statement in ¶ 202 regarding gang membership. This matter will be briefly addressed at sentencing, although it does not appear that this objection was raised previously to the probation officer as required by the sentencing schedule.

The Defendant argues that placing him in criminal history category IV over represents his criminal history category and placement in category III more accurately reflects his criminal history. This motion will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's objection to ¶ 202 of the PSR (Filing No. 271) will be heard at sentencing;

2. The Defendant's motion for downward departure (Filing No. 271) will be heard at sentencing;

3. If any party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

Dated this 8th day of November, 2012.

BY THE COURT:

s/
Chief United States District Judge